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No. 295

In the Supreme Court of the United States

OCTOBER TERM, 1957

ASSOCIATION OF LITHUANIAN WORKERS AND AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION, INC., PETITIONERS

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT SUGGESTING THAT THE CASE IS MOOT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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The Solicitor General, on behalf of the Attorney General, respondent herein, respectfully suggests to the Court that the above-entitled case has become moot.

1. Petitioners were designated by the Attorney General on January 22, 1954, as organizations within the purview of Executive Order 10450 (19 F. R. 655). They filed separate suits in the District Court for the District of Columbia seeking to have their respective designations set aside. The complaint of the Workers

Association[1] sought a judgment enjoining respondent from continuing to designate it and requiring him to notify all federal departments and agencies that the designation is withdrawn (W. R. 11–12). The complaint of the Literary Association, in addition to the relief sought by the Workers Association, asked the court to declare the regulatory procedures illegal and unconstitutional, and to require the Attorney General to notify the general public of the withdrawal of the designation (L. R. 7). The District Court granted the respondents' motions for judgment on the pleadings (W. R. 45; L. R. 33) and the Court of Appeals affirmed, holding that petitioners had failed to exhaust their administrative remedies (W. R. 46–56; L. R. 34–44). The petition for certiorari was filed on July 19, 1957, and the brief in opposition was filed in August 1957. This Court has, as yet, taken no action upon the petition.

2. On October 4, 1957, the Attorney General signed an order (Appendix, *infra*, p. 7) rescinding the order of January 22, 1954, as it pertains to petitioners, and removing petitioners from the list of organizations designated pursuant to Executive Order 10450. A copy of this order has been transmitted to the General Services Administration for publication in the Federal Register (Appendix, *infra*, p. 8). In addition, the Attorney General has sent a memorandum to the heads of all departments and agencies

[1] As in the petition and brief in opposition, petitioners are hereafter referred to as the Workers Association and the Literary Association and record references are designated by "W. R. ———" and "L. R. ——", respectively.

informing them of his action and requesting that they remove petitioners from their lists of designated organizations (Appendix, *infra*, pp. 8–9). Petitioners have been advised of the foregoing facts (Appendix, *infra*, pp. 9–10).

3. By rescinding the designation of petitioners and requiring publication of this fact in the Federal Register, the respondent has voluntarily accorded to petitioners all of the relief sought by them in their respective actions,[2] except insofar as the Literary Association seeks a declaratory judgment that the regulatory procedures are illegal and unconstitutional. In these circumstances, the cases have become moot. The Literary Association's additional request for a declaratory judgment does not alter this fact. Since that organization's designation has now been revoked, as requested, the request for a determination of the legality of the procedures under which it was designated no longer rests upon a justiciable case or controversy. *St. Pierre* v. *United States*, 319 U. S. 41; *Gray* v. *Board of Trustees*, 342 U. S. 517; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 416, 418; cf. *Eccles* v. *People's Bank*, 333 U. S. 426, 431–432, rehearing denied, 333 U. S. 877. As this Court said in *United Public Workers* v. *Mitchell*, 330 U. S. 75 at 90: "It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, be-

[2] Publication in the Federal Register will, of course, constitute notice of the Attorney General's withdrawal of the designations to the public generally. See Section 7 of the Federal Register Act, 49 Stat. 502, 44 U. S. C. 307; *Federal Crop. Ins. Corp.* v. *Merrill*, 332 U. S. 380, 384–385.

tween the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other."

4. We are not unmindful of the decisions indicating, generally, that mere cessation of allegedly illegal conduct may not suffice to moot a case. *E. g., Walling* v. *James V. Reuter, Inc.*, 321 U. S. 671; *Walling* v. *Helmerich & Payne*, 323 U. S. 37; *United States* v. *W. T. Grant Co.*, 345 U. S. 629. But there are very good reasons why these rulings do not apply here.

First, the basic issues petitioners raise are constitutional, and constitutional issues should not be decided, as *United Public Workers, supra,* points out, in the absence of a concrete, present, actual, and existing controversy in which a party's rights are really at stake.[3] In litigation such as *Reuter, Helmerich,* and *W. T. Grant,* in which the questions are statutory, common-law, or factual—non-constitutional issues—it is often proper to accede to the "public interest in having the legality of the practices settled" (*W. T. Grant, supra,* at 632). But the special canons of constitutional adjudication, which strongly counsel the avoidance of constitutional determinations if possible, do not permit similar leeway in a constitutional case like the present one where the petitioners will obtain nothing by a reversal of the decision below.

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[3] See, *e. g., United States* v. *Automobile Workers*, 352 U. S. 567, 589–593; *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 346–348; *Rescue Army* v. *Municipal Court*, 331 U. S. 549.

Second, in the *W. T. Grant* line-of-cases, the Government was seeking to vindicate the public interest by establishing a general rule of law, protecting some private rights affected with the public interest, or by sustaining a recurrent type of administrative order. Even in such a case, the Court has sometimes treated the case as moot where the particular concrete controversy has ended. *United States* v. *Amarillo-Borger Express, Inc.*, 352 U. S. 1028. Here, on the other hand, the petitioners seek, and can properly seek, to vindicate, not a public right, but only their own private rights and to redress their own alleged private injuries. Those claims have now been satisfied, and petitioners have no further interest to represent. They cannot even rightly claim to be acting on behalf of other organizations which challenge the Attorney General's list because no other organization has a pending court suit comparable to petitioners'.[4]

Third, the action taken by the Attorney General in petitioners' cases was not simply a "cessation" of conduct they challenge as unlawful—as is the case when a private party discontinues an asserted violation of law. The situation is just as if a challenged administrative or judicial order had been withdrawn. No official action now impinges on any asserted rights of petitioners, and there is nothing on which a court decree can now operate effectively. In the absence of a very strong showing that the challenged formal official action will shortly be repeated, we know of no

[4] A few organizations are now pursuing administrative remedies.

judicial suggestion that it can be reviewed after it is no longer effective.

5. Accordingly, it is respectfully requested that, in accordance with its established practice and in light of the suggestion made here, this Court grant the petition for certiorari, vacate the judgments below, and remand with a direction to dismiss the proceedings upon the ground that the cases are now moot. *United States* v. *Munsingwear*, 340 U. S. 36, 39–40; *Cozart* v. *Wilson*, 352 U. S. 884; *Brotherhood of Locomotive Firemen and Enginemen* v. *United States*, 343 U. S. 971; *Los Angeles Building & Construction Trades Council* v. *Le Baron*, 342 U. S. 802; *Eastern Air Lines* v. *Civil Aeronautics Board*, 341 U. S. 901; *Securities and Exchange Commission* v. *Harrison*, 340 U. S. 908; *Howard* v. *United States*, 340 U. S. 898; *Garcia* v. *Landon*, 348 U. S. 866; *United States* v. *Amarillo-Borger Express, Inc.*, 352 U. S. 1028.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

OCTOBER 1957.

APPENDIX

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
Order No. 151–57

REMOVAL OF ORGANIZATIONS FROM LIST OF ORGANIZATIONS DESIGNATED IN CONNECTION WITH THE FEDERAL EMPLOYEE SECURITY PROGRAM

Order No. 39–54 of the Attorney General dated January 22, 1954, published at 19 Federal Register 655, which concerned in part the designation of the following organizations pursuant to Executive Order No. 10450 in connection with the Federal employee security program for failure to comply with Section 41.3 of the rules of procedure with respect to notice, hearing and designation of organizations (Title 28, Chapter I, Part 41 et seq. CFR) as it pertains to these organizations is hereby rescinded, and said organizations are removed from the list of organizations designated pursuant to Executive Order No. 10450:

American Lithuanian Workers Literary Association (also known as Amerikos Lietuviu Darbininku Literaturos Draugija)
Association of Lithuanian Workers (also known as Lietuviu Darbininku Susivienijimas)

(sgd) HERBERT BROWNELL, Jr.,
Attorney General.

OCTOBER 4, 1957.

OCTOBER 4, 1957.

MR. BERNARD R. KENNEDY,
Director, Federal Register Division,
National Archives and Records Service,
General Services Administration,
Washington 25, D. C.

DEAR MR. KENNEDY: Pursuant to Section 1.201, Chapter I, Title I, Code of Federal Regulations, I am herewith transmitting for publication in the Federal Register an order of the Attorney General of October 4, 1957, entitled Removal of Organizations from List of Organizations Designated in Connection with the Federal Employee Security Program. The order is accompanied by three certified copies thereof.

Publication is desired as expeditiously as possible.

This document falls into Category 4—Notices.

Sincerely,

(sgd) HERBERT BROWNELL, JR.,
Attorney General.

Enclosures.

OCTOBER 4, 1957.

MEMORANDUM

To: Heads of Departments and Agencies.
From: The Attorney General.
Subject: Removal of organizations from list of organizations designated in connection with the Federal Employee Security Program.

Reference is made to my memorandum to you dated January 22, 1954, entitled "Designation of Organizations in Connection with the Federal Employee Security Program", which identified certain organizations to be added to the list of organizations designated pursuant to Executive Order No. 10450.

With respect to the *American Lithuanian Workers Literary Association* (also known as Amerikos Lietuviu Darbininku Literaturos Draugija) and the *Association of Lithuanian Workers* (also known as Lietuviu Darbininku Susivienijimas), I have recently reviewed the matter of their designation pursuant to the aforesaid Executive Order and have concluded that such action should be rescinded. Accordingly, you are requested to remove these organizations from your lists of organizations designated by the Attorney General pursuant to Executive Order No. 10450 in connection with the Federal Employee Security Program.

OCTOBER 4, 1957.

Registered Mail
Return Receipt Requested

ASSOCIATION OF LITHUANIAN WORKERS,
110–04 Atlantic Avenue,
Richmond Hill, New York.

GENTLEMEN: This is to advise you that I have recently reviewed the matter of the designation of the Association of Lithuanian Workers pursuant to Executive Order No. 10450 in connection with the Federal employee security program and have concluded that such action should be rescinded.

I have this day notified all Federal departments and agencies and have caused to be published in the "Federal Register" notification of the removal of your organization from the list of organizations designated pursuant to Executive Order No. 10450.

Sincerely,

(sgd) HERBERT BROWNELL, Jr.,
Attorney General.

OCTOBER 4, 1957.

Registered
Return Receipt Requested

AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION,
110–12 Atlantic Avenue,
Richmond Hill, New York.

GENTLEMEN: This is to advise you that I have recently reviewed the matter of the designation of the American Lithuanian Workers Literary Association pursuant to Executive Order No. 10450 in connection with the Federal employee security program and have concluded that such action should be rescinded.

I have this day notified all Federal departments and agencies and have caused to be published in the "Federal Register" notification of the removal of your organization from the list of organizations designated pursuant to Executive Order No. 10450.

Sincerely,

(sgd) HERBERT BROWNELL, JR.,
Attorney General.

U. S. GOVERNMENT PRINTING OFFICE: 1957